

FILED IN THE  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

**Feb 22, 2022**

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WASHINGTON

ANNE MARIE GRECO and IAN DAVID  
SUTHERLAND,  
Plaintiffs,  
v.  
NORTHWELL HEALTH, INC.,  
Defendant.

No. 2:21-CV-00188-SAB

**ORDER GRANTING  
DEFENDANT'S MOTION TO  
DISMISS; CLOSING FILE**

Before the Court are Plaintiffs' Motion for Summary Judgment, ECF No. 7, and Defendant's Motion to Dismiss Pursuant to FRCP 12 and FRCP4, ECF No. 9. Plaintiffs are representing themselves in this matter. Defendant is represented by Jennifer Oetter. The Court has determined that oral argument is not necessary. Local Rule 7.1(i)(3)(B)(iii).

Plaintiffs filed this action on June 10, 2021, ECF No. 1. Plaintiffs are Washington residents residing in Danville, Washington. Defendant is a non-profit corporation based in New York state. Defendant is the corporate parent of several hospitals and outpatient facilities in New York. It appears the basis of Plaintiff's claims arise out of medical care provided between June 4-9, 2019 in Huntington, New York.

**ORDER GRANTING DEFENDANT'S MOTON TO DISMISS; CLOSING  
FILE ~ 1**

1 On January 14, 2022, Plaintiffs filed a Declaration of Service indicating that  
2 Defendant was served on December 20, 2021. ECF No. 4. In his Declaration, Mark  
3 A. Gloade, Senior Vice President and Deputy General Counsel for Defendant,  
4 stated that on December 21, 2021, an individual from ABC Legal Hand delivered a  
5 document titled “Summons in Civil Action” to a legal assistant in Defendant’s  
6 Office of Legal Affairs. ECF No. 10. However, the document was one page, and  
7 did not include a copy of the Complaint.

8 In their Complaint, Plaintiffs make several allegations, but fail to provide the  
9 specific factual allegations, including who, what, when, where and how. For  
10 instance, the following allegations are presented in Plaintiffs’ Complaint: (1)  
11 Defendant administered opioids of dosage sufficient for other medical  
12 professionals to describe the dosage as “attempted murder;” (2) Defendant failed to  
13 provide adequate monitoring of Plaintiff’s vitals per standard medical procedure or  
14 Defendant’s own posted policies; (3) Defendant failed to follow medical advice  
15 suggested by Defendant’s relevant medical specialists; (4) Defendant refused to  
16 update Plaintiff’s Do Not Resuscitate Order upon Plaintiff’s request; (5) Defendant  
17 failed to follow Plaintiff’s wishes to speak with medical proxy instead of Plaintiff  
18 when Plaintiff felt incapable of informed consent; (6) Defendant made misleading  
19 and libelous statements in their medical records and inadequately portrayed  
20 Plaintiff’s medical condition; (7) Defendant failed to provide medical records in a  
21 reasonable and timely fashion upon Plaintiffs’ request, providing Plaintiffs with  
22 printed copies of several thousand pages of medical records several weeks after the  
23 initial request, rather than the digital copies requested, and then proceeded to  
24 request cop fees in excess of \$2,000; (8) Defendant administered medication  
25 known by modern medical knowledge to be inadvisable for Plaintiff’s condition;  
26 (9) Defendant referenced an employee as an expert despite their statements that  
27 Plaintiff’s condition does not cause pain, which is a primary part of the diagnostic  
28 criteria for Plaintiff’s condition; (10) Defendant refused to follow the advise of

**ORDER GRANTING DEFENDANT’S MOTON TO DISMISS; CLOSING  
FILE ~ 2**

1 experts in Plaintiff's condition who previously treated Plaintiff; and (11)  
2 Defendant handled Plaintiff's medical marijuana despite not being registered as  
3 Plaintiff's caretaker.

4 **1. Plaintiff's Motion for Summary Judgment**

5 On January 21, 2022, Plaintiffs filed a Motion for Summary Judgment.  
6 Plaintiff did not file any accompanying Affidavits or Declarations in support of  
7 their Motion.<sup>1</sup>

8 It appears that the basis for Plaintiffs requesting summary judgment is that  
9 because Defendant failed to respond to the Complaint, all facts asserted in their  
10 motion are taken as undisputed and as such, Plaintiffs are entitled to their requested  
11 remedies. Defendant asserts that a motion for summary judgment is premature, and  
12 questions of fact remain whether the Court has personal jurisdiction over  
13 Defendant, whether the Complaint was served on time, and whether the service of  
14 process was sufficient. Defendant also argues it would be inappropriate to consider  
15 the facts settled as discovery has not yet begun.

16 Summary judgment is appropriate "if the movant shows that there is no  
17 genuine dispute as to any material fact and the movant is entitled to judgment as a  
18 matter of law." Fed. R. Civ. P. 56(a). There is no genuine issue for trial unless  
19 there is sufficient evidence favoring the non-moving party for a jury to return a  
20 verdict in that party's favor. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250  
21 (1986). The moving party has the initial burden of showing the absence of a  
22 genuine issue of fact for trial. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325 (1986).

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24 <sup>1</sup> Fed. R. Civ. P. 56(c)(1)(A) provides: (c) Procedures.

25 (1) Supporting Factual Positions. A party asserting that a fact cannot be or is  
26 genuinely disputed must support the assertion by:

27 (A) citing to particular parts of materials in the record, including  
28 depositions, documents, electronically stored information, affidavits or  
declarations, stipulations (including those made for purposes of the motion only),  
admissions, interrogatory answers, or other materials.

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; CLOSING  
FILE ~ 3**

1 If the moving party meets its initial burden, the non-moving party must go beyond  
2 the pleadings and “set forth specific facts showing that there is a genuine issue for  
3 trial.” *Anderson*, 477 U.S. at 248.

4 In addition to showing there are no questions of material fact, the moving  
5 party must also show it is entitled to judgment as a matter of law. *Smith v. Univ. of*  
6 *Wash. Law Sch.*, 233 F.3d 1188, 1193 (9th Cir. 2000). When considering a motion  
7 for summary judgment, a court may neither weigh the evidence nor assess  
8 credibility; instead, “the evidence of the non-movant is to be believed, and all  
9 justifiable inferences are to be drawn in his favor.” *Anderson*, 477 U.S. at 255.

10 Here, the Court declines to view the facts as undisputed as requested by  
11 Plaintiffs. At this stage of the proceedings, if Plaintiffs believed Defendant’s non-  
12 responsiveness entitled them to relief, the proper motion would be a motion for  
13 default judgment pursuant to Fed. R. Civ. P. 55, rather than a motion for summary  
14 judgment under Fed. R. Civ. P. 56. That said, the Court declines to entertain such a  
15 motion for the following reasons. First, there are questions of fact regarding  
16 whether the Complaint was properly served. Second, cases should be decided on  
17 the merits when reasonably possible and therefore, it is necessary for discovery to  
18 commence before entering judgment in favor of any party. Third, Plaintiffs raise  
19 serious allegations of medical malpractice and are seeking significant damages.  
20 Such claims should be litigated on the merits. For these reasons, the Court denies  
21 Plaintiffs’ Motion for Summary Judgment.

## 22 **2. Defendant’s Motions to Dismiss Pursuant to FRCP 12 and FRCP 4**

23 Defendant asks the Court to dismiss Plaintiffs’ claims with prejudice  
24 because the Court does not have personal jurisdiction over it, the Complaint was  
25 not timely served, service of process was insufficiently executed, venue is  
26 improper with this Court, and Plaintiffs’ fail to state a claim upon which relief may  
27 be granted. Defendant also asserts that Plaintiffs have failed to join necessary  
28 parties.

**ORDER GRANTING DEFENDANT’S MOTON TO DISMISS; CLOSING  
FILE ~ 4**

## Background Facts

According to Defendant, it is a domestic not-for-profit corporation based in New York. It is the corporate parent of several hospitals and outpatient facilities in New York state. Defendant itself does not render patient care and has never provided or rendered patient care. It has no facilities in Washington and does no business in Washington.

## Motion Standard

Rule 12(b)(2) governs the dismissal of an action based on lack of personal jurisdiction. When a defendant moves to dismiss a complaint for lack of personal jurisdiction, the plaintiff bears the burden of demonstrating that jurisdiction is appropriate. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797, 799 (9th Cir. 2004). In ruling on a 12(b)(2) motion, the Court may, in its discretion, order discovery, hold an evidentiary hearing, or rely only on the written submissions. *Doe v. Unocal Corp.*, 248 F.3d. 915, 922 (9th Cir. 2001). If the motion is based on written materials rather than an evidentiary hearing, “the plaintiff need only make a *prima facie* showing of jurisdictional facts.” *Id.* A *prima facie* showing means that the plaintiff has produced admissible evidence, which if believed, is sufficient to establish the existence of personal jurisdiction. *Ballard v. Savage*, 65 F.3d 1495, 1498 (9th Cir. 1995).

Although the plaintiff cannot “simply rest on the bare allegations of its complaint and must come forward with facts, by affidavit or otherwise, supporting personal jurisdiction, uncontroverted allegations in the complaint must be taken as true.” *Amba Marketing Systems, Inc. v. Jobar International, Inc.*, 551 F.2d 784, 787 (9th Cir. 1977). Conflicts between parties over statements contained in affidavits must be resolved in the plaintiff’s favor. *Id.*

## A. Personal Jurisdiction

The power of a federal court presiding over a case based on diversity of citizenship to exercise personal jurisdiction over a nonresident defendant turns on

1 two independent considerations: whether an applicable state rule or statute  
2 potentially confers personal jurisdiction over the defendant, and whether assertion  
3 of such jurisdiction accords with constitutional principles of due process. *Data*  
4 *Disc, Inc. v. Sys. Tech. Assoc.*, 557 F.2d 1280, 1286 (9th Cir. 1977) (citation  
5 omitted). Washington’s long-arm statute extends the court’s personal jurisdiction  
6 to the broadest reach that the United States Constitution permits. *Byron Nelson Co.*  
7 *v. Orchard Management Corp.*, 95 Wash.App. 462, 465 (1999). Because  
8 Washington’s long-arm jurisdictional statute is coextensive with federal due  
9 process requirements, the jurisdictional analysis under state law and federal due  
10 process are the same. *Schwarzenegger v. Fred Martin Motor Co.*, 374 F.3d 797,  
11 800-01 (9th Cir. 2004).

12 The Due Process Clause protects a defendant’s liberty interest in not being  
13 subject to the binding judgments of a forum with which it has established no  
14 meaningful contacts, ties, or relations. *Burger King Corp. v. Rudzewicz*, 471 U.S.  
15 462, 471-72 (1985). Thus, for a court to exercise personal jurisdiction over a  
16 nonresident defendant, that defendant must have at least “minimum contacts” with  
17 the relevant forum such that the exercise of jurisdiction “does not offend traditional  
18 notions of fair play and substantial justice.” *Id.* (quoting *International Shoe Co. v.*  
19 *Washington*, 326 U.S. 310, 316 (1945)). In conducting the inquiry regarding the  
20 minimum contacts, the court should focus on the relationship among the defendant,  
21 the forum and the litigation. *Walden v. Fiore*, 571 U.S. 277, 284 (2014). For a  
22 State to exercise jurisdiction consistent with due process, the defendant’s suit-  
23 related conduct must create a substantial connection with the forum State. *Id.* This  
24 means “the relationship must arise out of contacts that the defendant *himself*  
25 creates with the forum State. *Id.* (emphasis in original). Additionally, the focus  
26 should be on the defendant’s contacts with the forum State itself, not the  
27 defendant’s contact with a person who reside there. *Id.* Absent consent, a basis for  
28 service of a summons on the defendant is a prerequisite to the exercise of personal

1 jurisdiction. *BNSF Ry. Co. v. Tyrell*, \_\_\_ U.S. \_\_\_, 137 S.Ct. 1549, 1556 (2017).

2 Depending on the nature of a foreign defendant's contacts with the forum, a  
3 federal court may obtain either specific or general jurisdiction over him. *Glencore*  
4 *Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co*, 284 F.3d 1114, 1123 (9th  
5 Cir. 2002).

6 General jurisdiction exists over a non-resident defendant when there is  
7 "continuous and systematic general business contacts that approximate physical  
8 presence in the forum state." *Schwarzenegger*, 374 F.3d at 801. General  
9 jurisdiction over a corporation is appropriate only when the corporation's contacts  
10 with the forum state "are so constant and pervasive as to render it essentially at  
11 home" in the state." *Easter v. Am. W. Fin.*, 381 F.3d 948, 960-61 (9th Cir. 2004).  
12 "Put another way, a defendant must not only step through the door, it must also sit  
13 down and make itself at home. *Tuazon v. R.J. Reynolds Tobacco Co.*, 433 F.3d  
14 1163, 1169 (9th Cir. 2006).

15 This is an exacting standard, because, as the Ninth Circuit explains, "a  
16 finding of general jurisdiction permits a defendant to be haled into court in the  
17 forum state to answer for any of its activities anywhere in the world." *Id.* (citation  
18 omitted). "Factors to be taken into consideration are whether the defendant makes  
19 sales, solicits or engages in business in the state, serves the state's markets,  
20 designates an agent for service of process, holds a license, or is incorporated  
21 there." *Bancroft & Masters, Inc. v. Augusta Nat'l Inc.*, 223 F.3d 1082, 1086 (9th  
22 Cir. 2000).

23 "The general jurisdiction inquiry does not focus solely on the magnitude of  
24 the defendant's in-state contacts." *Daimler AG v. Bauman*, 571 U.S. 117 139, n.20  
25 (2014). In-state business does not suffice to permit the assertion of general  
26 jurisdiction over claims that are unrelated to any activity occurring in Washington.  
27 *Tyrell*, 137 S.Ct. at 1559. Occasional sales to residents of the forum state are  
28 insufficient to create general jurisdiction. *See Brand v. Menlove Dodge*, 796 F.2d



1 1070, 1073 (9th Cir. 1986). The due process constraints apply to all assertions of  
2 general jurisdiction over nonresident defendants; the constraint does not vary with  
3 the type of claim asserted or business enterprise sued. *Tyrell*, 137 S.Ct. at 1558-59.

4 In order to establish specific jurisdiction over Defendant, Plaintiff must  
5 show that Defendant purposely established significant contacts with Washington  
6 and that the action arises out of or is related to those contacts. *Burger King Corp.*,  
7 471 U.S. at 471-73. Washington law requires that in order to establish specific  
8 jurisdiction over Defendant, Plaintiff must show three factors: (1) Defendant must  
9 have purposefully done some act or consummated some transaction in  
10 Washington; (2) Plaintiff's cause of action must arise from, or be connected with,  
11 such act or transaction; and (3) the exercise of jurisdiction  
12 must be reasonable in that it must not offend traditional notions of fair play and  
13 substantial justice. *See* Wash. Rev. Code 4.28.185(1)(a); *Failla v. FixtureOne*  
14 *Corp.*, 181 Wash. 2d 642, 650 (2014) (citations omitted).

15 Here, Plaintiffs have not shown, nor can they show that the Court has  
16 personal jurisdiction over Defendant. It is undisputed that Defendant does no  
17 business in Washington. As such, Defendant has no contacts with Washington to  
18 meet the requirement for general jurisdiction. Similarly, Plaintiffs cannot show  
19 specific personal jurisdiction over Defendant. Plaintiffs have not alleged that  
20 Defendant took any action in Washington that is tied to their causes of action. It  
21 appears from the Complaint that the only relation Defendant has to Washington is  
22 the fact that Plaintiffs sought medical care in New York, then went back to their  
23 home in Washington. This is not sufficient under the law of Washington or the  
24 U.S. Constitution for this Court to have personal jurisdiction over Defendant.

25 Because the Court does not have personal jurisdiction over Defendant, it  
26 declines to address its remaining arguments. The above-captioned case is  
27 dismissed, without prejudice. *See* Fed. R. Civ. P. 4(m); *Grigsby v. CMI Corp.*, 765  
28 F.2d 1369, 1372 n.5 (9th Cir. 1985).

**ORDER GRANTING DEFENDANT'S MOTION TO DISMISS; CLOSING  
FILE ~ 8**



1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiffs' Motion for Summary Judgment, ECF No. 7, is **DENIED**.

3 2. Defendant's Motion to Dismiss Pursuant to FRCP 12 and FRCP4,  
4 ECF No. 9, is **GRANTED**.

5 3. The above-captioned matter is **DISMISSED**, without prejudice.

6 **IT IS SO ORDERED.** The District Court clerk is hereby directed to enter  
7 this Order, provide copies to pro se Plaintiffs and counsel, and close the file.

8 **DATED** this 22nd day of February 2022.



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A handwritten signature in blue ink, reading "Stanley A. Bastian", is written over a horizontal line.

14 Stanley A. Bastian  
15 Chief United States District Judge  
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